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In re Application of :
McGrath et al. :
Application No.: 10/500,902 :
PCT No.: PCT/AU03/00019 :
Int. Filing Date: 09 January 2003 :
Priority Date: 09 January 2002 :
Attorney Docket No.: LAKE 038 :
For: INTERACTIVE SPATIALIZED :
AUDIOVISUAL SYSTEM :

DECISION

This decision is issued in response to applicants' "Petition to Withdraw Abandonment" which is being treated as a petition under 37 CFR 1.181 filed 19 May 2006.

BACKGROUND

On 09 January 2003, applicants filed international application PCT/AU03/00019 which claimed a priority date of 09 January 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 17 July 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 09 July 2004.

On 06 July 2004, applicants filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee; a copy of the international application; and a preliminary amendment.

On 19 January 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(h).

On 12 May 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 19 January 2005 within the time period set therein.

On 19 May 2006, applicants filed Petition to Withdraw Abandonment under 37 CFR 1.181 which included an executed declaration. Petitioner alleges that the executed declaration was submitted by facsimile on 18 February 2005.

DISCUSSION

A review of the application file reveals that the original declaration allegedly filed 18 February 2005 under 37 CFR 1.8 is not located in the application file.

37 CFR 1.8(b) states,

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office, after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The evidence filed with the present petition is convincing that the 18 February 2005 response included a declaration with a certificate of facsimile transmission. Additionally, applicant has: (1) informed the Office of the previous mailing of the correspondence promptly after becoming aware that the Office did not receive the items facsimiled on 18 February 2005, (2) supplied copies of the previously transmitted correspondence; and (3) provided a copy of the sending unit's report confirming transmission on 18 February 2005 with a statement which attests on a personal knowledge of the previous timely transmission. The declaration submitted on 19 May 2006 will be considered as a timely response to the Notification of Missing Requirements mailed 19 January 2005; however, the declaration will be given a receipt date of 19 May 2006. (See 37 CFR 1.8(a))

CONCLUSION

Therefore, applicants' petition under 37 CFR 1.181 is GRANTED and the holding of abandonment has been withdrawn.

A review of the application papers reveals that applicant completed all the requirements of 35 U.S.C. 371 for entry into the national stage. This application will be

given an international application filing date of 09 January 2003 and a date of 19 May 2006 under 35 U.S.C. 371.

This application is being returned to the United States/Designated Elected Office for processing in accordance with this decision.



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